

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MR. PATRICK MINOR,

Plaintiff,

vs.

WHATABURGER,

Defendant.

§
§
§
§
§
§
§
§
§
§

SA-24-CV-01068-XR

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

To the Honorable United States District Judge Xavier Rodriguez:

This Report and Recommendation concerns the above-styled cause of action. This case was referred to the undersigned for an order on Plaintiff's motion to proceed *in forma pauperis* (IFP) and a review of the pleadings pursuant to 28 U.S.C. § 1915(e). The undersigned has authority to enter this recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons set forth below, it is recommended that this action be dismissed for want of prosecution.

I. Background and Analysis

Plaintiff Patrick Minor filed this case on September 23, 2024, by filing a motion to proceed IFP and a proposed complaint. On September 26, 2024, the Court granted the motion to proceed IFP but ordered Plaintiff to file an amended proposed complaint because his proposed complaint was blank and contained no factual allegations or information regarding his proposed suit. The undersigned was therefore unable to evaluate the pleadings under Section 1915(e). Plaintiff's amended complaint was due by October 17, 2024. To date, Plaintiff has not filed an amended pleading with the Court.

A district court may dismiss an action for failure to prosecute or to comply with any order of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988) (per curiam); Fed. R. Civ. P. 41(b). The Court warned Plaintiff that a failure to file an amended pleading could result in the dismissal of this case for failure to prosecute or comply with a Court order. (Order [#3].) In light of Plaintiff's failure to file the ordered amended pleading, the undersigned will recommend dismissal of this case for want of prosecution and failure to follow a court order.

II. Conclusion and Recommendation

Having considered the record in this case and governing law, the undersigned recommends that this case be **DISMISSED** for want of prosecution.

III. Instructions for Service and Notice of Right to Object/Appeal

The United States District Clerk shall serve a copy of this report and recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the clerk of court, or (2) by mailing a copy to those not registered by certified mail, return receipt requested. Written objections to this report and recommendation must be filed **within fourteen (14) days** after being served with a copy of same, unless this time period is modified by the district court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The party shall file the objections with the Clerk of Court and serve the objections on all other parties. A party filing objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusive or general objections. A party's failure to file written objections to the proposed findings, conclusions and recommendations contained in this report shall bar the party from a *de novo* determination by the district court. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985); *Acuña v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to file

timely written objections to the proposed findings, conclusions and recommendations contained in this report and recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the un-objected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1).

SIGNED this 1st day of November, 2024.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE